

INVOLUNTARY COMMITMENT

OVERVIEW: A CONSTITUTIONAL BALANCING ACT

I. “A PENDULUM WITHIN A PENDULUM”

- RIGHTS OF SOCIETY:
(10TH AMENDMENT POLICE POWERS AND COMMON LAW *PARENS PATRIAE*) v. RIGHTS OF THE INDIVIDUAL
- RIGHTS OF THE INDIVIDUAL:
 - **RIGHT TO TREATMENT:** APPROPRIATE TO NEEDS AND ACCORDING TO PROFESSIONAL STANDARDS; 5TH AND 14TH AMENDMENT RIGHTS TO FREEDOM FROM UNREASONABLE RISK OF HARM; 4TH AMENDMENT RIGHT TO CONFIDENTIALITY v. RIGHTS OF THE INDIVIDUAL:
 - **RIGHT TO REFUSE TREATMENT:** 5TH AND 14TH AMENDMENT RIGHTS TO FREEDOM FROM DEPRIVATION OF LIBERTY WITHOUT DUE PROCESS “LEAST RESTRICTIVE ENVIRONMENT”; 1ST AMENDMENT RIGHT TO FREEDOM OF THOUGHT; 8TH AMENDMENT RIGHT TO FREEDOM FROM CRUEL AND UNUSUAL PUNISHMENT

II. KEY DEFINITIONS

- DANGEROUS (IC 12-7-2-5) NOTE: “SUBSTANTIAL RISK”
- GRAVELY DISABLED (IC 12-7-2-96) NOTE: “SECOND PRONG” (IMPAIRED JUDGMENT)
- FACILITY (IC 12-7-2-82) NOTE: VERY BROAD
- MENTAL ILLNESS (12-7-2-130) NOTE: INCLUDES INTELLECTUAL DISABILITY AND ADDICTION

III. FORMS OF COMMITMENT/DETENTION (IC 12-26-4)

A. IMMEDIATE DETENTION:

- POLICE + PROBABLE CAUSE TO BELIEVE MENTAL ILLNESS + DANGEROUSNESS OR GRAVE DISABILITY
- TRANSPORTATION TO APPROPRIATE FACILITY (WHERE CAN RECEIVE APPROPRIATE CARE IN LEAST RESTRICTIVE SETTING NECESSARY)
 - SEE IN RE: CONTEMPT OF WABASH VALLEY HOSPITAL (IND. CT. APP., 2005) FOR LIMITATIONS ON DUTY TO ADMIT)
- CANNOT BE TO STATE HOSPITAL
- 24 HOURS

B. EMERGENCY DETENTION (IC 12-26-5)

- PETITIONER ALLEGING MENTAL ILLNESS + DANGEROUSNESS OR GRAVE DISABILITY + DOCTOR'S STATEMENT (CAN BE WITHOUT EXAMINATION) + COURT ORDER TO TRANSPORT TO APPROPRIATE FACILITY

OR

- IF ALREADY AT FACILITY, PETITIONER + DOCTOR'S STATEMENT
- 72 HOURS

C. TEMPORARY COMMITMENT (IC 12-26-6)

- PETITIONER ALLEGING MENTAL ILLNESS + DANGEROUSNESS OR GRAVE DISABILITY + DOCTOR'S STATEMENT (EXAMINATION IN PAST 30 DAYS) + HEARING AND COURT ORDER
- CLEAR AND CONVINCING EVIDENCE
- NOT EXPECTED TO EXCEED 90 DAYS
- RENEWABLE ONLY ONCE

- CMHC APPROVAL IF TO STATE HOSPITAL

D. REGULAR COMMITMENT (IC 12-26-7)

- PETITIONER ALLEGING MENTAL ILLNESS + DANGEROUSNESS OR GRAVE DISABILITY + DOCTOR'S STATEMENT (EXAMINATION IN LAST 30 DAYS) + HEARING AND COURT ORDER
- CLEAR AND CONVINCING EVIDENCE
- EXPECTED TO EXCEED 90 DAYS
- UP TO ONE YEAR, RENEWABLE BY PERIODIC REPORT, UNLIMITED NUMBER OF RENEWALS
- CMHC APPROVAL IF TO STATE HOSPITAL

E. OUTPATIENT COMMITMENT (IC 12-26-14-1 TO -6)

- MAY BE TEMPORARY OR REGULAR IN DURATION
- OUTPATIENT PROVIDER MUST AGREE
- ELEMENTS ARE SAME AS FOR INPATIENT COMMITMENT + LIKELY TO COMPLY + NOT LIKELY TO BE DANGEROUS OR GRAVELY DISABLED IF COMPLIES
- REVOCATION BY COURT ORDER OF TRANSPORT TO FACILITY AND COURT HEARING

F. OUTPATIENT STATUS (IC 12-26-14-7 TO -10)

- INPATIENT COMMITMENT ADMINISTRATIVELY CONVERTED TO OUTPATIENT STATUS, WITHOUT ADDITIONAL COURT ORDER, FOR DURATION OF COMMITMENT PERIOD
- REVOCATION BY SHERIFF?? TRANSPORTATION TO FACILITY AND ADMINISTRATIVE HEARING CONDUCTED BY DMHA

IV. OPTIONS FOR DISPOSITION OF CRIMINAL CHARGES FOR PERSONS WITH MENTAL ILLNESS

A. MISDEMEANOR DIVERSION (IC 12-23-5-1)

- JUDICIAL NOTICE OF MENTAL ILLNESS AND APPROPRIATENESS OF TREATMENT
- DEFERRAL OF SENTENCING ON CONDITION OF RECEIVING TREATMENT
- SATISFACTORY COMPLETION RESULTS IN DISMISSAL OF CHARGES

B. FELONY DIVERSION FOR SUBSTANCE ABUSE (HEA 1304: IC 12-23-6.1 TO -8.1)

- EXCLUDES FORCIBLE FELONIES AND CERTAIN PRIOR CONVICTIONS
- MUST BE SUBSTANCE ABUSER LIKELY TO BE REHABILITATED
- PRE- OR POST-CONVICTION
- DMHA EVALUATION AND SUPERVISION

C. FORENSIC TREATMENT SERVICES GRANTS (HEA 1006: IC 12-23-19)

- NEW STATE FUNDING FOR TREATMENT FOR FELONY CONVICTIONS ELIGIBLE FOR COMMUNITY CORRECTIONS

D. CIVIL COMMITMENT WITH CHARGES PENDING

- NOT PRECLUDED BY STATUTES
- AMBIGUOUS LEGAL STATUS
- QUALIFIES FOR DMHA GATEKEEPING INTO STATE HOSPITAL IF FORCIBLE FELONY (IC 12-24-12-10)

E. INSUFFICIENT COMPREHENSION TO STAND TRIAL (“ICST”) (IC-35-36-3)

- INABILITY TO UNDERSTAND AND ASSIST COUNSEL
- 2 DISINTERESTED EVALUATORS (NO LONGER M.D. REQUIREMENT)
- HEARING AND ORDER OF COMMITMENT TO DMHA FOR RESTORATION
- PRESENT SNAP-SHOT
- 3-MONTH AND 6-MONTH REPORTS TO COURT
- PETITION FOR CIVIL COMMITMENT IF CANNOT CERTIFY
- COMPETENCY BY END OF 6 MONTHS, BUT CHARGES WILL STILL BE PENDING AND ONGOING DUTY TO ATTEMPT RESTORATION
- 2/3 OF DEFENDANTS ARE CERTIFIED WITHIN 6 MONTH PERIOD
- AMNESIA FOR EVENT AND UNWILLINGNESS TO COOPERATE WITH COUNSEL ARE NOT “ICST”
- EMERGING BODY OF CASE LAW AS TO DISMISSAL OF CHARGES FOR THE PERMANENTLY INCOMPETENT (TBI/DEMENTIA/ INTELLECTUALLY DISABLED)
- QUALIFIES FOR DMHA GATEKEEPING INTO STATE HOSPITAL BEDS
- NOTE TO PROSECUTORS: DISMISSAL OF CHARGES BEFORE CIVIL COMMITMENT TERMINATES DMHA’S HOLDING AUTHORITY

F. NOT RESPONSIBLE BY REASON OF INSANITY (NGRI) (IC 35-36-2-4)

- INABILITY TO APPRECIATE WRONGFULNESS AT THE TIME OF THE ACT

- 2 DISINTERESTED EVALUATORS (M.D. STILL REQUIRED)
- HEARING AND CIVIL COMMITMENT TO STATE HOSPITAL (BUT ONLY IF CMHC AGREES TO STATE HOSPITAL)
- PAST SNAP-SHOT CALLS FOR SPECULATION AND EVALUATORS RELUCTANT TO SUPPORT
- LIKE USUAL CIVIL COMMITMENTS EXCEPT FOR NOTICE OF OFF-GROUNDS LEAVES, TRANSFERS, AND DISCHARGES (IC 12-26-15-1)
- NO CONDITIONAL RELEASE IN INDIANA SO DISCHARGEABLE WHEN NO LONGER MEET COMMITMENT CRITERIA, BUT PROSECUTOR MAY REQUEST A PRE-DISCHARGE HEARING
- CMHC'S ARE CAUTIOUS ABOUT ACCEPTING TRANSFER OF COMMITMENT FOR LIABILITY REASONS
- QUALIFIES FOR DMHA GATEKEEPING INTO STATE HOSPITAL BEDS

G. GUILTY BUT MENTALLY ILL (GBMI) (IC 35-36-2-5)

- ONE EVALUATOR (NO M.D. REQUIRED)
- SENTENCING AS WITH ANY OTHER DEFENDANT
- ENHANCED SCRUTINY AT RDC FOR NEED FOR TREATMENT

H. CONVICTION WITH SUSPENDED SENTENCE

- CIVIL COMMITMENT OR VOLUNTARY TREATMENT AS CONDITION OF PROBATION (HOWEVER, NO ADULT VOLUNTARIES TO STATE HOSPITALS)

I. DOC OUTDATE COMMITMENT

- PETITIONER IS DOC PRISON SUPERINTENDENT

- STATE HOSPITAL ADMISSION MUST COINCIDE WITH RELEASE DATE
- DISCHARGE WILL BE BACK TO COMMUNITY THROUGH CMHC
- QUALIFIES FOR DMHA GATEKEEPING INTO STATE HOSPITAL BEDS

V. CRIMINALIZATION OF MENTAL ILLNESS

A. NEGATIVES:

- FELONY CONVICTIONS RESULT IN LOSS OF MANY FUTURE BENEFITS AND OPPORTUNITIES
- RISK OF HARM IN JAIL
- LACK OF BEST MEDICATIONS
- PERCEIVED INABILITY TO FORCE MEDICATIONS
- CALLING POLICE MAY RESULT IN NEW CHARGES

B. POSITIVES:

- IMMEDIATE SAFETY FOR FAMILY MOST AT RISK
- IF CIVIL COMMITMENT IS UNAVAILABLE, BETTER THAN NO INTERVENTION
- MAY RECEIVE FIRST TREATMENT WHILE IN JAIL OR AS ICST
- MAY RESULT IN A "CIT" POLICE INTERVENTION
- CRIMINAL COURTS CAN COMPEL TREATMENT IN WAYS CIVIL COURTS CANNOT

C. CONTROVERSIAL ISSUE: CRIMINALLY CHARGING INPATIENTS UNDER CIVIL COMMITMENT

VI. CONFIDENTIALITY ISSUES

- A. LEGAL BASES MAY BE 3 DIFFERENT AND CONFLICTING SOURCES: STATE LAW (IC 16-39); OR FEDERAL REGULATIONS: HIPAA (45 CFR PARTS 160 AND 164) OR SUBSTANCE ABUSE RECORD CONFIDENTIALITY (42 CFR PART 2)
- B. THE GENERAL RULE IN INDIANA IS PATIENT/LEGAL REPRESENTATIVE CONSENT OR A GOOD CAUSE COURT ORDER UNDER IC 16-39-3
- C. EXCEPTIONS TO CONSENT OR COURT ORDER, FOR LAW ENFORCEMENT PURPOSES ARE:
- TO AVERT SERIOUS AND IMMINENT THREAT TO PERSON OR PUBLIC (45 CFR 164.512(j))
 - AS REQUIRED BY LAW (CPS OR APS REPORTING) (45 CFR 164.512(a))
 - REPORTING OF CRIME ON PREMISES (45 CFR 164.512(f))
 - DUTY TO WARN EVEN TARGET IF ABLE TO LESSEN RISK (45 CFR 164.512(j))
 - TO LAW ENFORCEMENT TO APPREHEND PERSON (45 CFR 164.512(j))
- D. GOOD CAUSE COURT ORDER (IC 16-39-3)
- STATE LAW IS MORE RESTRICTIVE THAN HIPAA SO TRUMPS HIPAA ON MOST LAW ENFORCEMENT DISCLOSURES PERMITTED BY HIPAA AS EXCEPTIONS TO CONSENT (45 CFR 164.512(f))
 - IC 16-39-3 SETS FORTH REQUIREMENTS FOR HEARING, NOTICE, PROOF, FINDINGS, AND SCOPE OF COURT ORDER
 - PROBLEMS WHEN LAW ENFORCEMENT RESPONDS TO REPORT REQUIRED BY LAW OR CRIMES ON PREMISES BUT CAN'T GET ENOUGH INFO ON PERPETRATOR (WITHOUT HIS CONSENT) TO

DETERMINE WHETHER TO CHARGE (NOTE TO PROSECUTORS: A SUBPOENA FROM THE PROSECUTOR FOR THE ADDITIONAL INFORMATION, WHICH IS “PHI,” WILL USUALLY NOT SOLVE THIS PROBLEM---A GOOD CAUSE COURT ORDER IS GENERALLY NEEDED)

- PROBLEMS WHEN LAW ENFORCEMENT IS ATTEMPTING TO SOLVE A PAST CRIME NOT ON PREMISES AND PROVIDER HAS VALUABLE INFORMATION (SEE WILLIAM HURT v. STATE (IND. CT. APP., 1998))
- INDIANA COURTS HAVE BEEN SERIOUS ABOUT THE GOOD CAUSE COURT ORDER REQUIREMENT (SEE MUNSELL V. HAMBRIGHT (IND. CT. APP., 2002))

VII. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)

- EXTENSION OF BRADY BILL CONCEPT TO LIMIT WHO CAN LEGALLY PURCHASE HANDGUNS
- NICS IMPROVEMENT AMENDMENTS ACT (U.S. CONGRESS, 2007) REQUIRED STATES TO COME INTO COMPLIANCE WITH GREATER REPORTING TO NICS OF ADJUDICATIONS OF MENTAL DEFECT, USING FINANCIAL INCENTIVES AND PENALTIES
- PRIOR TO 2007, INDIANA HAD ONLY BEEN REPORTING FELONY CONVICTIONS
- INDIANA CODE AMENDMENTS OF 2009 REQUIRE REPORTING BY COURTS OF PERSONS THE SUBJECT OF TEMPORARY AND REGULAR COMMITMENTS, ICST’S, NGRI’S, AND GBMI’S
- REPORTS GO FROM STATE COURT ADMINISTRATOR TO NICS SYSTEM
- DETENTIONS AND GUARDIANSHIPS ARE EXCLUDED BY STATE LAW FROM NICS REPORTING

- A PROVIDER DOES NOT VIOLATE CONFIDENTIALITY LAWS BY RESPONDING TO COURTS FOR NICS REPORTING PURPOSES (IC 16-39-2-8)